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REMARKS

Claims 1-31 are pending in the present application. In the Office Action mailed July 6, 2004, the Examiner rejected claim 16 under 35 U.S.C. §112, second paragraph. The Examiner next rejected claims 1-7, 9, 12, 14, and 18-22 under 35 U.S.C. §102(e) as being anticipated by Maschke et al. (USP 6,221,012). Claim 13 was rejected under 35 U.S.C. §103(a) as being unpatentable over Maschke et al. Claims 11 and 24 were rejected under 35 U.S.C. §103(a) as being unpatentable over Maschke et al. and Gombrich et al. (USP 4,857,716). Claims 8, 26, and 28-29 were rejected under 35 U.S.C. §103(a) as being unpatentable over Maschke et al. and Fuchs et al. (USP 5,788,646). Claim 10 was rejected under 35 U.S.C. §103(a) as being unpatentable over Maschke et al. and Ballantyne et al. (USP 5,867,821), and further in view of Official Notice. Claims 15-17 and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Maschke et al. in view of Ballantyne et al. Claim 23 was rejected under 35 U.S.C. §103(a) as being unpatentable over Maschke et al., Ballantyne et al., Official Notice, and further in view of Fuchs et al. Claims 27 and 31 were rejected under 35 U.S.C. §103(a) as being unpatentable over Maschke et al., Fuchs et al., and further in view of Gombrich et al. Claim 30 was rejected under 35 U.S.C. §103(a) as being unpatentable over Maschke et al., Fuchs et al., and further in view of Ballantyne et al.

Regarding the rejection of claim 16 as being indefinite, Applicant has amended the claim to clarify the claimed invention. Specifically, Applicant has amended the claim to clarify that the PDA functions "at least include a scheduler, reminders, and to-do lists" and has removed "other PDA functions." As such, Applicant believes claim 16 is in full compliance with 35 U.S.C. §112.

The Examiner rejected claim 1 as anticipated by Maschke et al. The Examiner asserted that Maschke et al. teaches "a communication interface to receive patient data from a wireless local area network (WLAN) within a medical care facility and transmit care parameters as needed to the WLAN in response thereto" in column 3, lines 21-44. However, the cited section merely states that "[a] portable monitor 102 is detachably coupled to and acquires physiological data signals from a plurality of data acquisition modules" and that "[a]s used herein, the detachable coupling of the data acquisition modules, and in particular for pods 150-156, is intended to include any manner of communicating the acquired data signals to monitor 102, such as a wireless communication link." Col. 3, lns. 23-26 and 40-44 (emphasis added). Therefore, Maschke et al. teaches that the individual coupling between a portable monitor 102 and a particular pod 150-156 may be by way of an individual wireless link. However, such a point-to-

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point wireless link between a specific portable monitor and a specific pod does not constitute a wireless local area network (WLAN). That is, as one of ordinary skill in the art will readily recognize, a WLAN, by definition, includes a "network." Accordingly, a WLAN is a system including an infrastructure that facilitates the wireless communication between any or all devices configured to communicate over the WLAN and not merely a single wireless link between two individual devices. To this end, the Specification clearly states that "the server 44 is connected peripherally to hospital labs 52, a pharmacy 50, a voice router 54, and to a number of portable patient monitoring devices (PPMs) 56 by a wireless local area network (WLAN)" through which, "simultaneously, the server 44 can access real time data from labs 52 and the pharmacy 50, and can transmit such data to the PPMs 56, keeping the health care providers 58 updated at remote locations." Specification, pg 7, ¶ 1.

The "the detachable coupling of the data acquisition modules" by a wireless connection, as explicitly defined by Maschke et al., merely allows a specific portable monitor and a specific pod to communicate, but in no way discloses or supports any "network." Therefore, Maschke et al. does not teach or suggest use of a WLAN or "a communication interface to receive patient data from a wireless local area network (WLAN) within a medical care facility and transmit care parameters as needed to the WLAN in response thereto," as claimed.

The Examiner also asserted that Maschke et al. teaches "an input device connected to the processor to allow a change in the care parameters by a health care provider" in column 6, lines 34-41; column 11, lines 45-62; and column 15, lines 36-43. However, the cited sections merely describe data transfer between the "portable monitor" and a particular "pod." Maschke et al. teaches a system that utilizes local pods to derive data from a given patient and portable monitors that may individually interface with each pod to extract and display the patient data derived by the pod. *Id.* Therefore, Maschke et al. teaches that data stored in the pod or the portable monitor may be transferred back and forth between the two devices. See col. 6, lns. 34-41; col. 11, lns. 45-62; and col. 15, lns. 36-43. Maschke et al. is clear that data transfer is only for the purpose of *monitoring*, hence, the term "portable monitor." This does not include the changing or the ability to change "care parameters," as claimed. *Id.* Therefore, Maschke et al. teaches a passive monitoring system and does not teach or suggest any "input device connected to the processor to allow a change in the care parameters by a health care provider."

For at least these reasons, claim 1 is patentably distinct from the art of record. As such, claims 2-17 are also in condition for allowance pursuant to the chain of dependency. However, Applicant wishes to note that in rejecting claims 8, 10, 11, 13, and 15-17 the Examiner not only

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relied on Maschke et al. but also various combinations of Maschke et al. with Gombrich et al., Fuchs et al., Ballantyne et al. and even Official Notice. Applicant believes that the necessity to rely on such varying and complex combinations of references and Official Notice is direct evidence that the claimed invention is not taught or suggested by the prior art.

Furthermore, the Examiner's application of Official Notice is inappropriate under the Manual Patent Examining Procedure (MPEP). "The Examiner may take Official Notice of facts outside of the record which are capable of instant and unquestionable demonstration as being 'well-known' in the art." MPEP §2144.03. However, MPEP §2144.03 is clear that "such rejections [relying on official notice] should be judiciously applied," be "rare," and be used "[i]n limited circumstances." Furthermore, "any facts so noticed should be of notorious character and serve only to 'fill in the gaps' in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground for rejection." MPEP §2144.03. Applicant does not believe that the Examiner's use of Official Notice is merely to "fill in the gaps." That is, the Examiner took Official Notice of multiple elements of the claims, thereby effectively attempting to fill in apparent "holes" in the rejection rather than "gaps." The use of Official Notice is hereby traversed.

The Examiner must "cite a reference in support of his or her position" should the Applicant traverse the assertion. MPEP § 2144.03. Furthermore, "[i]t is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." MPEP § 2144.03 citing *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). In the case at hand, Applicant disagrees with the Examiner's assertions. For example, with respect to claim 10 the Examiner took Official Notice that "VOIP is well known in the art." However, such is not the standard for appropriate use of Official Notice. That is, it is insufficient to allege that VoIP is well known. Rather, the Examiner must establish that VoIP was well known at the time of invention and within the context and use claimed. Applicant believes that at the time of invention, VoIP was, in fact, not "well known" in the art for use in the manner claimed at the time the invention was made. This application was filed October 12, 2000. Since this is a first Office Action on a case filed four (4) years ago, perhaps the Examiner did not consider the state of the art in October of 2000. "The requirement 'at the time the invention was made' is to avoid impermissible hindsight." MPEP §2141.01. Applicant hereby traverses the use of Official Notice. Furthermore, Applicant believes the Examiner's use of Official Notice in this regard is clear evidence of an

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application of impermissible hindsight reconstruction. The very fact that the Examiner stated that VoIP is well known demonstrates a divergence from the rule prohibiting hindsight reconstruction.

The Examiner also rejected claim 18 as anticipated by Maschke et al. The Examiner again cited column 6, lines 34-41; column 11, lines 45-62; and column 15, lines 36-43 as teaching "a portable patient monitor having a processor...to process and transmit care parameters" and "an input device to change the patient care parameters." However, as previously shown with respect to claim 1, the cited sections merely describe passive data transfer between the "portable monitor" and a particular "pod" and does not include the changing or the ability to change "care parameters," as claimed. See col. 6, lns. 34-41; col. 11, lns. 45-62; and col. 15, lns. 36-43. Therefore, Maschke et al. teaches a passive monitoring system and does not teach or suggest "a portable patient monitor having a processor...to process and transmit care parameters" or "an input device to change the patient care parameters."

Additionally, claim 18 calls for "a WLAN coupled to the plurality of bedside patient monitors and the portable patient monitor." Again, Maschke et al. only teaches that individual couplings may be made between a portable monitor 102 and a particular pod 150-156 that may be by way of an individual wireless link. However, a WLAN, by definition, includes a "network" and not simply individual or point-to-point communications couplings. The "detachable coupling of the data acquisition modules" by a wireless connection, as explicitly defined with one another, by Maschke et al., merely allows a specific portable monitor and a specific pod to communicate but does not teach or suggest the use of any "network." Therefore, Maschke et al. does not teach or suggest any WLAN let alone "a WLAN coupled to the plurality of bedside patient monitors and the portable patient monitor," as claimed.

For at least these reasons, claim 18 is patentably distinct from the art of record. Accordingly, claims 19-25 are in condition for allowance pursuant to the chain of dependency.

Regarding claim 26, the Examiner again cited a variety of sections of Maschke et al. as teaching "remotely interface to a WLAN to acquire any patient alarms" and "sound an alarm if a patient alarm occurs." However, as previously shown, Maschke et al. simply does not teach or suggest any WLAN. Furthermore, Maschke et al. does not teach or suggest the acquisition or sounding of any patient alarms through any interface, remotely via WLAN, or otherwise.

The Examiner cited column 6, lines 59-64 and column 12, lines 30-38 as "teaching" the claimed acquisition and/or sounding of patient alarms. However, the cited sections simply states:

Processor PCOB 200 controls the acquisition of data from the pods and cartridges, the processing of patient data, display of parameters and waveforms, alarms and Ethernet™ and multi-vendor connectivity.

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Maschke et al., col. 6, lns. 59-64 (emphasis added).

Lastly, pod 150 receives data representative of pulse and oximetry. Oximetry data representing the saturation, or fraction of oxyhemoglobin to functional hemoglobin (SPO₂ in %O₂) are collected using absorption spectrophotometry. As shown in FIG. 1b, pod 150 includes two proximately located switches 13 and 15. Switch 13 is coupled to a circuit which transmits a signal to monitor 102 causing monitor 102 to condition itself to start the cardiac output procedure (e.g., perform range and alarm limit adjustments).

Maschke et al., col. 12, lns 30-38 (emphasis added).

It seems apparent from a review of these cited sections of Maschke et al. that no computer program to cause a processor to "remotely interface to a WLAN to acquire any patient alarms" and "sound an alarm if a patient alarm occurs" is taught or suggested. Rather it appears the cited sections were merely the result of a text search for the word "alarm." However, it is clear that these two instances of the word "alarm" do not teach or suggest any computer program to cause a processor to "remotely interface to a WLAN to acquire any patient alarms" and "sound an alarm if a patient alarm occurs," as claimed.

In fact, the Examiner acknowledged that "Maschke...does not expressly disclose that the patient monitoring system includes a processor/program to silence a patient's bedside alarm," as claimed. Office Action, pg. 10, ¶ 1. Accordingly, the Examiner cited column 1, lines 19-34 of Fuchs et al. as providing a basis to modify the system of Maschke et al. to include such. However, Fuchs et al. teaches the very centralized monitoring systems including the limitations identified in the Background of the Invention Section of the present Specification and overcome by the present invention. Specifically, the cited section of Fuchs et al. states:

In hospitals and other health care environments of the type having a plurality of patient monitors, it is common to have a central review station coupled to receive the physiological signals acquired from a plurality of patient monitors, in order that physiological signals from a plurality of patients can be reviewed or monitored at a single, central location. Such central review stations have been in use for many years, such as those referred to as a "nurses" station or a "workstation" (referred to hereinafter as a central station). From such stations a clinical user can review patient waveforms, vital signs, trend information and other patient data. Central stations also typically remotely annunciate alarms for assigned bedsides, thereby alerting the clinical staff to a potential emergency, and allow remote control of bedside physiological alarm limits and bedside alarm silencing.

Fuchs et al., col. 1, lns. 19-34 (emphasis added).

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Similarly, paragraph two of the Background of the Invention Section of the present Specification states:

Clinical patient monitoring systems generally consist of individual patient monitoring terminals connected to a centralized monitoring system staffed by a nurse or clinician. The centralized character of these systems allows a small number of caregivers to monitor a large number of patients. The patient monitor terminals typically stationed in the patients' rooms register activity such as heart rate, ECG, respiratory patterns, and other pertinent signs. In addition, drug infusion devices stationed by the patient deliver regulated dosages as prescribed and programmed by doctors and nurses. For bedside monitoring, these devices work adequately. However, patient mobility is hindered and becomes a hazard when transporting the bulky, inelegant bedside patient monitoring systems.

Background of the Invention Section, ¶ 2 (emphasis added).

Therefore, Fuchs et al. teaches the very centralized monitoring systems including the limitations identified in the Background of the Invention Section of the present Specification that we overcome by the present invention. Accordingly, Fuchs et al. teaches away from the claimed capability to "remotely interface to a WLAN to acquire any patient alarms" and "sound an alarm if a patient alarm occurs" by requiring the very prior art "centralized review stations" that the claimed portable patient monitors seek to improve upon.

Like Maschke et al., Fuchs et al. does not teach any WLAN or system for communicating patient data and alarms over the WLAN to remote patient monitors, as claimed. Therefore, neither Maschke et al. or Fuchs et al. teach or suggest "remotely interface[ing] to a WLAN to acquire any patient alarms" and "allow user silencing of the alarm at the portable patient monitor and at a bedside monitor." Rather, while, as acknowledged by the Examiner, Maschke et al. does not teach or suggest such an ability to remotely silence an alarm from a portable patient monitor, Fuchs et al. teaches away from such an ability by requiring the very prior art "centralized review stations" that the claimed portable patient monitors seek to improve upon.

For at least these reasons, claim 26 is patentably distinct from the art of record. Accordingly, claims 27-31 are also in condition for allowance pursuant to the chain of dependency.

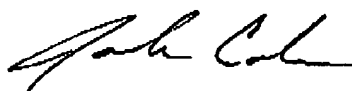
Therefore, in light of at least the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 1-31.

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Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,



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